

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/650,564	)	Title: INTRA-FREQUENCY
	)	SEARCHING IN THE PRESENCE OF
Patent No. : 7,917,163	)	FREQUENCY GAPS
	)	
Inventors : Messay Amerga	)	
	)	
Attorney Docket No. : 020673	)	Filing Date : August 27, 2003
	)	
Group Art Unit: 2618	)	Issue Date : March 29, 2011

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37**  
**C.F.R. § 1.705(d)**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Petitioner hereby submits this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) to correct the Office' Patent Term Adjustment (PTA) calculation for U.S. Patent No. 7,917,163 (hereinafter, the "'163 patent"). Petitioner submits that this request is timely filed within two months of the issue as required under 37 C.F.R. § 1.705(d) because the issue raised in this petition could not have been raised in an application for patent term adjustment under 37 C.F.R. §1.705(b).

On November 30, 2011, a Notice of Allowance (NOA) was mailed for application 10/650,564 (from whence the '163 patent issued). The NOA letter noted a PTA of 697 days. While the NOA letter did not break-down the PTA into constituent delays, the PTA tab of the application in PAIR showed that the 697 day delay was arrived at by subtracting 264 days of applicant delay from a USPTO delay of 961 days. The 264 day applicant delay was made up of a 29 day delay pursuant to 37 C.F.R. §1.704(b) and a 235 day delay which correctly summed non-overlapping delays under 37 C.F.R. 1.704(b) and 37 C.F.R. §1.704(c)(3)(i) caused when the

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applicant filed a late response to an office action concurrent with a petition to revive the application which went unintentionally abandoned. As the applicant's PTA calculation of 697 days agreed with the USPTO's calculation, the applicant did not have any issues to raise in petition under 37 CFR 1.705(b) when the issue fee was paid on 2/23/2011.

On March 29, 2011 the '163 patent issued with a PTA of eight hundred fifty six (856) days. The Office's new calculation of 856 days of the PTA was based upon 1251 days of delay by the Office [961 days pursuant to 37 C.F.R. § 1.703(a)(1) and 582 days pursuant to 37 C.F.R. § 1.703(b) less a 292 day A-B overlap] reduced by 395 days of Applicant delay [29 days pursuant to 37 C.F.R. § 1.704(b), the 235 days attributable to the abandonment discussed above and a new delay of 131 days seemingly related to the same abandonment (based on the entry made in the PTA tab in PAIR)]. Petitioner submits that the applicant delay of 131 days appeared for the first time on the PTA tab on Public PAIR at the time the patent issued and more importantly, this delay period is incorrectly calculated. Please see Declaration of Venugopal Menon accompanied with this petition.

**The 131-day delay was not in the record at the time the Notice of Allowance was mailed**

Had the 131-day delay been on record at the mailing of the NOA, the PTA would have been calculated as 566 days (961 days of Office delay reduced by  $29+235+131=395$  days of Applicant delay). Instead the adjustment in the NOA letter was noted as 697 days (961 days reduced by  $29+235=264$  days of Applicant delay).

**The 131-day delay was incorrectly calculated**

Based on the file history, the Office mailed a Final Rejection on June 25, 2009. The application was deemed abandoned on December 26, 2009 for failure to respond to an office action. Applicant filed a response to the Office Action with an RCE on March 5, 2010, and concurrently filed a petition to revive the application under 37 C.F.R. 1.137(b). The application was revived on May 18, 2010. Petitioner submits that the abandonment delay under 37 C.F.R. § 1.703(c)(3)(i) and the delay in responding to the Office Action under §1.704(b) should have only included non-overlapping periods between December 26, 2009 to May 18, 2010. Accordingly, the correct delay calculation as a result of the abandonment is 235 days. There is no provision under 37 C.F.R. 1.704 under which a further 131-day applicant delay for the transactions involving the abandonment can be charged to the applicant.

In light of the foregoing, Petitioner respectfully submits that the correct number of days of PTA is nine hundred and eighty seven (987) days, which is calculated from 1251 days of Office Delay (961 + 582 -292 days) reduced by 264 days of Applicants' delay (29 + 235 days). Because this is the first opportunity for the applicant to raise the issue of the 131-day error in PTA, the applicant has met the threshold requirements for filing the petition to recalculate PTA under §1.705(d).

Petitioner submits that the above-captioned case is not subject to any Terminal Disclaimer.

Please charge any fees that may be due or credit any overpayments to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: May 11, 2011

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